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EXAMINER				
STRANGE, AARON N				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/855,445

**Applicant(s)**

PIERRE COTE ET AL.

**Examiner**

AARON STRANGE

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22, 24-31 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24-31 and 33-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. The Examiner would like to note that the present application has been reassigned to a new Examiner.
2. In the interest of expedited prosecution, the Examiner recommends conducting an interview to discuss the present application prior to filing a response to the present Office action. The Examiner feels that an interview would help facilitate a mutual understanding of the respective positions of Applicant and the Examiner, and assist in the identification of potentially allowable subject matter and/or issues for appeal. If Applicant agrees that an interview would be beneficial, he/she is encouraged to contact the Examiner to schedule one.

### ***Response to Arguments***

3. Applicant's arguments filed 9/28/07 have been fully considered but they are not persuasive.
4. With regard to claim 1, and Applicant's assertion that the combination of Daly, Rogers and Schieltz fails to teach the compilation of a single reply about performance information for services offered by one monitored server system (Remarks 14-16), the Examiner respectfully disagrees. When considered together, Daly and Rogers teach this limitation in combination. Daly teaches sending a request for performance information about a plurality of services on a monitored server system (col. 15, ll. 65-67;

col. 16, ll. 35-65), but fails to explicitly disclose that the servers with respond with a compilation of information. Rogers teaches receiving a single client request for information from multiple sources, obtaining the requested information from the multiple sources, and compiling it into a single response before sending the response to a client (col. 7, ll. 33-49).

The combined teachings of Rogers and Daly disclose a system that prepares a compilation of performance information in response to a single request from a client. After creating the compilation, it is sent to the client, allowing the client to receive the requested information without receiving it in a piecemeal fashion.

5. With regard to claim 37, and Applicant's assertion that Schieltz fails to "disclose, suggest or enable polling deficient services and/or services included in a critical list more frequently than systems operating normally" (Remarks 17), the Examiner respectfully disagrees. Regarding Applicant's assertion that Schieltz "reduces the polling frequency of devices with deficiencies" (Remarks 17), it is respectfully submitted that Applicant has mistaken "inactive" devices for devices with "deficiencies". Schieltz does teach polling inactive devices less frequently, but devices with deficiencies are not necessarily inactive.

Regardless of the distinction between inactive and deficient devices, Schieltz was not intended to be bodily incorporated into Daly or Rogers. Schieltz was relied upon only for its teaching of organizing devices into lists and polling the devices in each list at

different frequencies based on "the varying needs of the different types of devices" (col. 9, ll. 49-54).

One of ordinary skill in the art, when presented with this flexible teaching, would have recognized that certain types of devices, such as devices currently malfunctioning, could be placed in a class that is monitored more frequently, and would have seen the benefits of doing so. These benefits would have included prompt notification of problems becoming more serious or being resolved.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-10, 18, 19, 22-33, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daly et al. US patent 51748,896 and Rogers et al. US patent 5,701,451 and Schieltz (U.S. Patent Number 5,659,787).

8. With regard to claims 1, 24, 29-31, 33, and 37, Daly discloses a method of monitoring the performance of a server system that is to be monitored (col. 3, line 64- col. 4, line 3), the method comprising:

at a server system (service object) that is to poll, generating a single query requesting ("ascertains from") a compilation of information about the performance of a plurality of services offered by the monitored server system ("instantiations of the service entity") [col. 15, lines 65-67];

transmitting the single query from the polling server system to the monitored server system [col. 15, lines 65-67]; and

at the polling server system, receiving the compilation of information about the performance of the plurality of services offered by the monitored server system [fig. 8, step 806, col. 16, lines 61- 65].

Daly does not specifically disclose receiving one reply that includes the compilation of information without receiving the information in a piecemeal fashion. In similar art of information retrieval, Rogers teaches a method for submitting a single request to a server and receiving a single reply containing compiled information (col.4 lines 34-37, 65-68, col.7 lines 33-47). Rogers teaches using a single request to obtain compiled information reply is advantageous because it reduces needless user intervention and facilitates remote information retrieval over the internet (col.4 lines 48-50). Hence, it would have been obvious for one of ordinary skill in the art to combine the teaching of Rogers with Daly to provide a single request and a single compiled reply because it would have enabled a user to efficiently obtain information over the Internet (Rogers col. lines 30- 50).

Daly also does not specifically teach utilizing two lists, critical and normal, based on the deficiencies detected during monitoring. Daly also does not specifically recite that

the devices in critical list are polled more than the devices in the normal list. In a similar network monitoring system, Schieltz disclosed categorizing network devices into separate groups or classes, wherein each group or class has a different polling frequency (see inter alia Schieltz Col 2, lines 54-67, Col 9, lines 55-60 and Col 10, lines 9-19). Schieltz further disclosed that the groups/classes are updated dynamically, i.e. a device may move between polling frequency groups dynamically (Col 10, lines 10-20). The polling frequency groups are determined based on the demonstrated monitoring needs of each device (Col 10, lines 10-20). In the context of network monitoring, as networking devices approach critical stress or failure points network administrators naturally become more concerned with those particular devices because they have the highest risk of failure compared to devices running normally. Hence, administrators wish to monitor the devices with deficiencies more closely. In view of Schieltz and the functions typically performed by network administrators when monitoring networks, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Daly's system to dynamically update at least two classes of polling frequencies for devices, as disclosed by Schieltz, based on the level of deficiencies detected for each device. Such a configuration provides network administrators with more reliable (i.e. more frequent) device status information about the devices they are most concerned with (i.e. devices with the highest risk of failure). Furthermore the network bandwidth is more efficiently utilized since devices in proper operating status are not polled as frequently.

9. In considering claim 2, Daley discloses: at the polling server system (service object), receiving from a client system (server management component) a request for at least some of the information contained in the compilation [fig. 7, step 704, col. 15, lines 43-51]; and

transmitting the at least some of the information contained in the compilation from the polling server system to the client system in response to the request [fig. 7, step 708, col. 16, lines 18-20].

Daley does not explicitly teach a polling server system separate from a client system. Nonetheless, at the time of the invention it would have been obvious variation to separate the polling server (server object) from the client (server manager component). The client requesting information from the polling server, and the polling server generating a single query to the monitored server for the compilation information is functionally equivalent to a client comprising a polling server directly querying the monitored server for the compilation information. That is, implementing the polling server on the client as taught by Daley or having a separate polling server from the client to query a monitored server is one and the same function. *See In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

10. In considering claim 3, Daley discloses: automatically transmitting at least some of the information contained in the compilation from the polling server system to a client system [fig. 7, step 708, col. 16, lines 18-20, col. 19, lines 1-10].



11. In considering claim 4, Daley discloses:

the compilation comprises a status of network services of the monitored server system [fig. 5A, #108, "Status" column, col. 6, line 57 - col. 7, line 16].

12. In considering claim 5, Daley discloses:

the network services comprise a directory service [fig. 5B-I, col. 17, lines 25-30].

13. In considering claim 6, Daley discloses: the network services comprise a message store service ("mailbox") [col. 6, line 66 - col. 7, line 5, col. 11, lines 11-22].

14. In considering claim 7, Daley discloses:

the network services comprise a message transfer agent [col. 6, line 66 - col. 7, line 5, col. 16, lines 37-34].

15. In considering claim 8, Daley discloses:

the network services comprise a facsimile communications service ("other network services") [col. 13, lines 29-36].

16. In considering claim 9, Daley discloses;

the network services comprise an Internet communications service [col. 1, lines 10-29].

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17. In considering claim 10, Daley discloses:

the network services comprise a messaging service (E-Mail Service) [col. 6, line 66 - col. 7, line 5].

18. In considering claim 18, Daly discloses: at the polling server system, installing polling software capable of performing the step of transmitting the single query from the polling server system to the monitored server system [col. 16, lines 44-55, col. 6, lines 46-56]; and

at the monitored server system, installing attendant software ("agent") capable of generating the compilation of information about the performance of the plurality of services offered by the monitored server system [col. 16, lines 27-34, 66-67].

19. In considering claim 19, Daly discloses:

the attendant software (agent) monitoring a time indicator (fig. 4, #60, clock) at the monitored server system [col. 5, lines 27-43, col. 16, lines 66-67]; and

the attendant software including a time indication ("run-time activity") based at the monitored server system with the compilation [col. 12, lines 27-41, col. 17, lines 31-40].

20. In considering claim 22, Daly discloses: at the monitored server system, generating the compilation of information about the performance of the plurality of services offered by the monitored server system [col. 16, lines 56-65].

21. In considering claims 23 and 32, Daly discloses:

at the polling server system, using the compilation to update at least one server system list [fig. 8, step 806, col. 16, lines 56-65].

22. In considering claim 24, while Daly discloses a server system list, Daley does not explicitly disclose a normal server list and a critical server list. Nonetheless, one of ordinary skill in the art would realize that Daly's list (see fig. 5A, #110) serves the same purpose as a normal list and critical list, in that it distinctly categorizes the status of each server ("running"/normal or "not running"/critical) based on the polling results [col. 10, lines 8-10].

23. In considering claims 25 & 27, in the combined system each list is dynamically updated based on the deficiencies detected during polling.

24. In considering claims 26 & 28, Daly implicitly discloses: transferring the monitored server system from a normal server system list to a critical server system list (or from a critical server list to a normal server list) is caused by a polling software settings set in the polling server system by a system administrator ["--the network administrator may also initiate administration actions regarding the network service instantiations listed in the list 110-- ", col. 7, lines 7-35].

25. In considering claim 38, Daly discloses the different services are determined based on a pre-selected group of different services set by an administrator (fig.5A # 102, col.8 lines 30-54).

26. Claims 11-17, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daly and Rogers and Schieltz as applied to claim 1 above, and further in view of Quan (US 5,230,051).

27. In considering claims 11 & 34, while Daly discloses messaging service and reporting a compilation to the polling server, Daly does not explicitly disclose automatically attempting to establish a working connection to the mailbox of the messaging service, or reporting the result of such an attempt. Nonetheless, in analogous art, Quan also teaches a method of monitoring the performance of a messaging service system (col. 3, lines 43-58). Quan further discloses:

at the monitored server system, automatically attempting to establish a working connection to a mailbox in the messaging service ("connect subroutine") [fig. 3, step 302, col. 10, lines 6-48];

at the monitored server system, determining whether the working connection is established [fig. 3, step 302, col. 10, lines 6-48].

Given the teachings of Quan, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the system/method disclosed by Daly to include a the step if automatically attempting to establish a connection to a mailbox

and including the result on this attempt in the compilation generated in Daly's system. The motivation as suggested by Quan would be to keep track and log information related to the delivery and status of messages and in any event generate error notifications [col. 3, lines 43-58].

28. In considering claims 12 & 35, Quan discloses: depending on the result of the step of determining, automatically attempting to determine whether a message is available at the mailbox [col. 10, lines 48-62]. For the reasons set forth above in reference to claim 11, at the time of the invention, it would have been obvious to also including the result of determining if whether a message is available in the mailbox in the compilation.

29. In considering claims 13 & 36, Quan discloses: depending on the result of the step of automatically attempting to determine whether a message is available at the mailbox, attempting to read the message [fig. 5, step 508, col. 11, line 57 - col. 12, lines 18]. For the reasons set forth above in reference to claim 11, at the time of the invention, it would have been obvious to also report the result of attempting to read the message in the compilation.

30. In considering claim 14, Quan does not explicitly disclose that establishing a connection to a messaging service depends on the acceptance of a security code. Nonetheless, Examiner takes official notice that accepting security code while trying to

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establish a connection to a mailbox of a message service was well known in the art at the time of the invention. A very common feature of most mail systems is to prompt for a user name and password (security code).

31. In considering claim 15, Quan discloses:

automatically attempting to establish a working connection is driven by a detection of a failure in the messaging service [col. 14, lines 37-55].

32. In considering claim 16, Quan discloses:

exercising a software service used in the establishment of a user's working connection [col. 10, lines 6-48].

33. In considering claim 17, Quan discloses:

the software service comprises a buffer service [col. 4, lines 10-21].

34. Claims 20 & 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daly and Rogers and Schieltz as applied to claim 1 above, and further in view of Auty et al. (US 5,809,161).

35. In considering claim 20, Daly does not explicitly disclose a master time indicator at a polling server. Nonetheless, in related art of polling remote servers to acquire

compilation of information ("images, including their associated data") [col. 28, lines 5054], Auty discloses:

the polling software monitoring a master time indicator at the polling server system to determine a master time indication [col. 32, lines 27-37]; and

comparing the time indication in the compilation ("information received from the sites") with the master time indication of the polling server system [col. 32, lines 27-37].

Given the teachings of Auty, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the system/method disclosed by Daly to compare the time indication in the compilation with that of the master time of the polling server. The motivation as suggested by Auty would be to synchronize the time indicators of the polling server and the monitored server to account for network propagation delays and link congestion [col. 32, lines 27- 37].

36. In considering claim 21, Auty discloses:

if the difference between the time indication in the compilation and the master time indication exceeds a maximum permissible difference, the polling software at the polling server system causing the time indicator at the monitored server system to be updated to more accurately match the master time indication at the polling server system [col. 32, lines 27-37].

***Conclusion***

37. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON STRANGE whose telephone number is (571)272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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/Glenton B. Burgess/  
Supervisory Patent Examiner, Art Unit 2153

/A. S./  
Examiner, Art Unit 2153